

ANTIDegradation IN A NUTSHELL

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I. Federal Statute: Clean Water Act 303(d)(4)(B)

(B) STANDARD ATTAINED.—For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standard, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

II. Federal Regulation: CFR Sec 131.12

PART 131--WATER QUALITY STANDARDS

--Table of Contents Subpart B--Establishment of Water Quality Standards

Sec. 131.12 Antidegradation policy.

- (a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:
 - (1) [**TIER 1**] Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
 - (2) [**TIER 2**] Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

- (3) **[TIER 3]** Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.
- (4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

III. State Regulation: Env-Ws 1708 ANTIDEGRADATION

ANNOTATED OUTLINE

CORE IDEAS

- A. Antidegradation review is to be applied parameter by parameter and Assessment unit by Assessment unit
- B. Antidegradation review is analogous to review for 401 Water Quality Certification, and should be included in the 401 Certification process.
- C. The CALM (Coordinated Assessment and Listing Methodology - <http://www.des.state.nh.us/wmb/swqa/2004/pdf/CALM.pdf>) is the basis for data needs and analysis methods.
- C. In principle, Antidegradation review includes all designated uses. In practice, the review will include those designated uses for which there are assessment methodologies in the CALM.
- D. Antidegradation review will always include CALM core parameters. Review for parameters other than core parameters will be conducted if DES has data indicating a concern for the parameter(s).

Env-Ws 1708.02 Applicability. “New or increased activity...that would lower water quality”

- A. Activity – not defined. **PROPOSED:** An activity is anything that requires a 401 WQ certificate. These include:
 - 1. Wetlands Permits
 - 2. FERC licenses
 - 3. NPDES discharge permits
 - 4. Activities under NPDES stormwater phase II
 - a. Small MS4 General Permit
 - b. Municipally-owned industrial facilities
 - c. Construction General Permit – 1 acre or more disturbance

Env-Ws 1708.03 Submittal of Data

- A. DES proposes that antidegradation review procedures be incorporated into the 401 Water Quality Certification process.
- B. AFTER TIER 2 discussions are completed, DES proposes additional guidance or rule language on application procedures and required submittals.

Env-Ws 1708.04 Protection of Existing Uses

- A. Implements TIER 1
- B. Because all NH waters are either Class B or Class A, and criteria for both of these classes support all designated uses, TIER 1 antidegradation is met if a waterbody meets water quality criteria, using the CALM.
- C. No proposed changes or additional implementation guidance

Env-Ws 1708.05 Protection of Water Quality in ORW

- A. Implements TIER 3
- B. “Water quality shall be maintained and protected, except limited activity which results in no more than temporary and short-term changes in water quality.”
- C. AFTER TIER 2 discussions are completed, DES proposes additional guidance on what constitutes “limited activity which results in no more than temporary and short-term changes in water quality”.

Env-Ws 1708.06 Protection of Class A Waters

- A. Redundant with RSA 485-A:8
- B. DES proposes to delete this section

Env-Ws 1708.07 Protection of Water Quality in High Quality Waters

“Env-Ws 1702.24 "High quality surface waters" means all surface waters whose water quality is better than required by any aquatic life and/or human health water quality criteria contained in these rules or other criteria assigned to the surface water, or whose qualities and characteristics make them critical to the propagation or survival of important living natural resources.”

A. Implements TIER 2

B. DES proposes guidance on quantitative determination of “better than ... water quality criteria”

1. Parameter by parameter
2. Assessment Unit by Assessment Unit
3. Use same minimum data as CALM requires for assessment

C. “Significant” degradation requires economic or social development justification, while “insignificant” degradation does not

Env-Ws 1708.08 Assessing Waterbodies

A. AFTER discussions on process and significant vs. insignificant are completed, DES proposes additional guidance or rule language on assessing waterbodies.

1. Analogous to Env-Ws 1705.02 ~~Low Flow Conditions~~ ***Application of Criteria in Computations for Establishing Discharge Permit Limits*** in that DES must evaluate existing water quality, and apply a model to predict changes in water quality from the proposed activity and estimate the amount of degradation.

B. Assimilative capacity

“Env-Ws 1702.03 "Assimilative capacity" means the amount of a pollutant or pollutants that can safely be released to a waterbody without causing violations of applicable water quality criteria or negatively impacting uses.”

“Env-Ws 1705.01 Assimilative Capacity. Except for combined sewer overflows where 99 percent of the assimilative capacity shall be used to determine compliance, not less than 10 percent of the assimilative capacity of the surface water shall be held in reserve to provide for future needs.”

Env-Ws 1708.08(d) “The above determinations shall reserve no less than 10% of a surface water’s assimilative capacity”

1. Traditionally applied to D.O. and toxics
2. Not clear if the 10% reserve is of TOTAL assimilative capacity or REMAINING assimilative capacity
3. DES proposes to discuss assimilative capacity AFTER other TIER 2 discussions are completed

Env-Ws 1708.09 Significant or Insignificant Determination

- A. A proposed activity that uses 20% or more of the remaining assimilative capacity is significant
- B. A proposed activity that uses less than 20% of the remaining assimilative capacity is insignificant unless DES decides otherwise based on a list of factors and a “greater than normal” water quality impact
- C. DES proposes guidance documents and possible rule language changes on significance determination, for discussion after “high quality water” discussions

Env-Ws 1708.10 Demonstration of Economic or Social Development

- A. "Interim Economic Guidance for Water Quality Standards" EPA- 823-B-95-002, published by the EPA on March 1995 is the standard reference
- B. DES proposes to evaluate with WQSAC whether this publication is sufficient for decision-making, AFTER other TIER 2 discussions above.

Env-Ws 1708.11 Public Participation and Intergovernmental Coordination

- A. This process should be the same as for a 401 Water Quality Certificate. DES will bring proposed 401 WQC rules to WQSAC for review and discussion

IV. PROPOSED SEQUENCE OF WQSAC DISCUSSION

- A. Introduction / Process September 14, 2004 and following meeting
- B. 401 Water Quality Certification Process October and November meetings
- B. TIER 2 December to meetings
 - 1. High quality surface water quantitative determination
 - 2. Significant / Insignificant determination
 - 3. Assessing assimilative capacity
 - 4. 10% assimilative capacity reserve
 - 5. Economic and Social Justification
 - 6. Submittal of data / application procedures
- C. TIER 3